

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARIE TABER and SCOTT TABER,

Plaintiffs,

v.

WAL-MART, INC.,
WAL-MART REAL ESTATE BUSINESS TRUST
WAL-MART REALTY COMPANY
WAL-MART STORES EAST, INC., and
WAL-MART STORES EAST, LP

Defendants.

NOTICE OF REMOVAL

Case №.

PLEASE TAKE NOTICE that defendants Walmart Inc., (incorrectly sued as “Wal-Mart, Inc.”), Wal-Mart Real Estate Business Trust, Wal-Mart Realty Company, Wal-Mart Stores East, Inc., and Wal-Mart Stores East, LP, (collectively, “Removing Defendants”), by their attorneys, Bennett Schechter Arcuri & Will LLP, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this Notice of Removal of the action styled *Marie Taber and Scott Taber, Plaintiffs, versus Wal-Mart, Inc. et al., Defendants*, Index №. 803590/2021 (the “Action”), from the Supreme Court of the State of New York, County of Erie, to the United States District Court for the Western District of New York.

In support thereof, Removing Defendants state:

1. On or about March 18, 2021, Plaintiffs Marie Taber and Scott Taber (hereinafter, “Plaintiffs”) commenced the Action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Erie, against the Removing Defendants. A copy of the Summons and Complaint is attached hereto and incorporated herein by reference as

Exhibit A.

2. On April 21, 2021, Removing Defendants appeared in the Action by serving their Answer, a copy of which is attached hereto and incorporated herein by reference as **Exhibit B.**

3. After the commencement of the action, and in accordance with N.Y. CPLR 3017(c), Removing Defendants served a Request for Supplemental Demand for Relief on the Plaintiffs, a copy of which is attached and incorporated herein by reference as **Exhibit C.**

4. On June 30, 2021, Removing Defendants received a response to Plaintiffs' Supplemental Demand for Relief, dated June 28, 2021, seeking a total of Six Million Dollars (\$6,000,000.00) in damages in this action, a copy of which is attached herein by reference as **Exhibit D.**

5. According to Plaintiffs' Complaint, Plaintiff Marie Taber is an individual domiciled in the State of New York and, therefore, for the purposes of this Notice of Removal, is a citizen of the State of New York. *See* Ex. A.

6. According to Plaintiffs' Complaint, Plaintiff Scott Taber is an individual domiciled in the State of New York and, therefore, for the purposes of this Notice of Removal, is a citizen of the State of New York. *See* Ex. A.

7. Removing Defendant Walmart Inc. (incorrectly sued as "Wal-Mart, Inc.") is a corporation organized under the laws of the State of Delaware, with a principal place of business in the State of Arkansas and, therefore, for the purposes of this Notice of Removal, is a citizen of the States of Delaware and Arkansas.

8. Removing Defendant Wal-Mart Real Estate Business Trust is a real estate business trust organized under the laws of the State of Delaware. The only Trustee and the only

Beneficial Owner of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co., which is a corporation organized under the laws of the State of Delaware with a principal place of business in the State of Arkansas. Therefore, for the purposes of this Notice of Removal, Defendant Wal-Mart Real Estate Business Trust is a citizen of the States of Delaware and Arkansas.

9. Removing Defendant Wal-Mart Realty Company is a corporation organized under the laws of the State of Arkansas, with a principal place of business in the State of Arkansas and, therefore, for the purposes of this Notice of Removal, is a citizen of the State of Arkansas.

10. Removing Defendant Wal-Mart Stores East, Inc., is now known as Wal-Mart Stores East, LLC, which is a limited liability company organized under the laws of the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart, Inc., which is a corporation organized under the laws of the State of Delaware with a principal place of business located in Arkansas. Therefore, for the purposes of this Notice of Removal, Defendant Wal-Mart Stores East, LLC, incorrectly sued as Wal-Mart Stores East, Inc., is a citizen of the States of Delaware and Arkansas.

11. Removing Defendant Wal-Mart Stores East, LP, is a limited partnership organized under the laws of the State of Delaware. The only partners of Wal-Mart Stores East, LP are general partner WSE Management, LLC and limited partner WSE Investment, LLC, both of which are limited liability companies organized under the laws of the State of Delaware. The sole member of both WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC, a limited liability company organized under the laws of the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart Inc., a corporation organized under the laws of the State of Delaware, with a principal place of business in the State of Arkansas. The principal place of business for all of the foregoing entities (Wal-Mart Stores East, LP; WSE Management,

LLC; WSE Investment, LLC; Wal-Mart Stores East, LLC; and Walmart Inc.) is in the State of Arkansas. Accordingly, for the purposes of this Notice of Removal, Defendant Wal-Mart Stores East, LP is a citizen of the States of Delaware and Arkansas.

12. This Court has original subject matter jurisdiction over the Action pursuant to 28 U.S.C. §§1332(a) and 1441(b), because (a) there is complete diversity of citizenship among the parties; (b) the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs; and (c) none of the parties in interest who are properly joined and served as Defendants are citizens of New York State. The Action may, therefore, be removed pursuant to 28 U.S.C. § 1441(b).

13. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) and (c), because it is filed within thirty (30) days after receipt by the Removing Defendants of Plaintiffs' Demand for Relief (the other paper from which it was first ascertainable that the case is removable), and within one (1) year of commencement of the Action.

14. Pursuant to 28 U.S.C. §1446(b)(2), all defendants who have been properly joined and served join in and consent to the removal of the Action.

15. Pursuant to 28 U.S.C. §1441(a), removal venue exists in the United States District Court for the Western District of New York because the Supreme Court, Erie County (the Court in which the Action was originally filed) is within the jurisdiction of the Western District of New York.

16. Pursuant to 28 U.S.C. §1446(a), all process, pleadings, and orders served to date upon the Removing Defendants are appended hereto. Pursuant to Local Rule 81(a)(3), an index of all documents filed in the state court action is attached hereto as **Exhibit E**.

17. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice

of Removal is being served upon the Plaintiffs and is being filed with the Clerk of the Supreme Court, Erie County. *See* Notice of Filing of Notice of Removal, with Affidavit of Service, attached hereto as **Exhibit F**.

18. Removing Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Removing Defendants request that the case styled *Marie Taber and Scott Taber, Plaintiffs, versus Wal-Mart, Inc. et al., Defendants*, Supreme Court of the State of New York, County of Erie, Index №. 803590/2021, be removed to this Court, and that this Court take subject matter jurisdiction over this Action.

Dated: Buffalo, New York
July 27, 2021

Yours, etc.,



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